

AMENDED IN ASSEMBLY MAY 24, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 452

Introduced by Assembly Member Ma

February 15, 2011

An act to amend Section 637.7 of the Penal Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 452, as amended, Ma. Electronic tracking devices: invasion of privacy.

Existing law prohibits a person or entity from using an electronic tracking device to determine the location or movement of a person. This prohibition does not apply when the owner of a vehicle has consented to the use of the electronic tracking device with respect to the vehicle, or to a law enforcement agency.

This bill would recast this provision to prohibit a person or entity from using, or knowingly employing or engaging a 3rd party to use, an electronic tracking device to determine the location or movement of a person without the consent of that person.

This bill would additionally provide that this prohibition does not apply to the parent or legal guardian of a minor child or conservator of ~~an~~ *a legally* incompetent person for purposes of tracking that minor or incompetent person, except as specified. The bill would also provide that this prohibition does not apply to the use of an electronic tracking device by a commercial service provider, as provided, only if the provider has given a specified notice regarding the use of the device. The bill would prohibit the provider from selling, distributing,

transferring, or releasing any information gathered or collected to any 3rd party or the person utilizing the service, except as specified.

Existing law defines an electronic tracking device as any device attached to a vehicle or other moveable thing that reveals its location or movement by the transmission of electronic signals.

This bill would instead define an electronic tracking device as any device attached to, placed on, or inserted into, a vehicle, wireless telephone, or other movable thing that reveals its location or movement by the transmission of electronic or radio signals, including, but not limited to, a global positioning system.

The bill would also prohibit a person from requiring, coercing, or compelling any other individual to consent to undergo the subcutaneous implanting of an electronic tracking device, as specified.

Existing law provides that a violation of these provisions is a misdemeanor, punishable by imprisonment in a county jail for not more than 6 months, by a fine not to exceed \$1,000, or both that fine and imprisonment.

This bill would provide that a violation of these provisions is a misdemeanor, punishable by imprisonment in a county jail for not more than 6 months, by a fine not to exceed \$2,500, or by both that fine and imprisonment. ~~This bill would provide that a violation of these provisions by a person who is prohibited by a court order from contacting, directly or indirectly, harassing, following, surveilling, or stalking a person protected by that order is punishable by imprisonment in a county jail for not more than one year, by a fine not to exceed \$5,000, or by both that fine and imprisonment.~~

~~By increasing the punishment for a crime, and by creating a new crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that the right
- 2 to privacy is fundamental to a free and civilized society and that

1 the increasing use of electronic surveillance devices is eroding
2 personal liberty. The Legislature declares that the electronic
3 tracking of a person's location without that person's knowledge
4 and consent violates that person's reasonable expectation of
5 privacy.

6 SEC. 2. Section 637.7 of the Penal Code is amended to read:

7 637.7. (a) No person or entity in this state shall use or
8 knowingly employ or engage a third party to use an electronic
9 tracking device to determine the location or movement of a person
10 without the consent of that person.

11 (b) Subdivision (a) shall not apply to any of the following:

12 (1) The legal owner, lessor, or lessee of a vehicle who has
13 consented to the use of the electronic tracking device with respect
14 to that vehicle.

15 (2) The use of an electronic tracking device by a federal, state,
16 or local law enforcement agency or individual law enforcement
17 officer, acting in good faith, for a law enforcement purpose.

18 (3) The use of an electronic tracking device by a parent or legal
19 guardian or person having legal custody of a minor for purposes
20 of tracking that minor, unless there is a court order in place
21 prohibiting the parent, legal guardian, or other person having legal
22 custody of the minor from contacting, directly or indirectly,
23 harassing, following, surveilling, or stalking the minor.

24 (4) ~~The use of an electronic tracking device by a conservator~~
25 ~~or guardian of an incompetent person for the purposes of tracking~~
26 ~~that incompetent person, unless there is a court order in place~~
27 ~~prohibiting the conservator or guardian of the incompetent person~~
28 ~~from contacting, directly or indirectly, harassing, following,~~
29 ~~surveilling, or stalking the incompetent person.~~ *of a legally*
30 *incompetent person for the purposes of tracking that incompetent*
31 *person provided that electronic tracking has been approved by a*
32 *court. This exception shall not apply if there is a court order in*
33 *place prohibiting a conservator of a legally incompetent person*
34 *from contacting, directly or indirectly, harassing, following,*
35 *surveilling, or stalking the incompetent person.*

36 (5) The use of an electronic tracking device by a commercial
37 service provider, such as a wireless telephone service provider,
38 when the electronic tracking device is used in support of the
39 primary purpose of the commercial service being provided. This
40 paragraph shall apply only after the commercial service provider

1 has given notice of the use of the electronic tracking device to the
2 person utilizing the service. The notice shall describe the process
3 by which the commercial service provider may electronically track
4 the person and disclose for what purposes the provider is using
5 electronic tracking. The commercial service provider shall not sell,
6 distribute, transfer, or release any information gathered or collected
7 regarding a person from the electronic tracking device to any third
8 party or the person utilizing the service without a court order or
9 the written consent of the actual person being tracked.

10 (c) As used in this section, “electronic tracking device” means
11 any device attached to, placed on, or inserted into a vehicle,
12 wireless telephone, or other movable thing that reveals its location
13 or movement by the transmission of electronic or radio signals,
14 including, but not limited to, a global positioning system.

15 (d) A violation of this section is a misdemeanor punishable by
16 imprisonment in a county jail not to exceed six months, or by a
17 fine not to exceed two thousand five hundred dollars (\$2,500), or
18 by both that fine and imprisonment.

19 ~~(e) Notwithstanding subdivision (e), a violation of this section~~
20 ~~by a person who is prohibited from contacting, directly or~~
21 ~~indirectly, harassing, following, surveilling, or stalking another~~
22 ~~person or persons by a court order who tracks the person or persons~~
23 ~~protected by that order is guilty of a misdemeanor, punishable by~~
24 ~~imprisonment in a county jail not to exceed one year, or by a fine~~
25 ~~not to exceed five thousand dollars (\$5,000), or by both that fine~~
26 ~~and imprisonment.~~

27 ~~(f)~~

28 (e) A violation of this section by a person, business, firm,
29 company, association, partnership, or corporation licensed under
30 Division 3 (commencing with Section 5000) of the Business and
31 Professions Code shall constitute grounds for revocation of the
32 license issued to that person, business, firm, company, association,
33 partnership, or corporation, pursuant to the provisions that provide
34 for the revocation of the license as set forth in Division 3
35 (commencing with Section 5000) of the Business and Professions
36 Code.

37 ~~(g)~~

38 (f) Notwithstanding subdivision (a), a person shall not require,
39 coerce, or compel any other individual to consent to undergo the
40 subcutaneous implanting of an electronic tracking device as those

1 terms are defined in subdivision (h) of Section 52.7 of the Civil
2 Code.

3 ~~(h)~~

4 (g) It is not a defense to this section that the electronic tracking
5 device used by the person or entity failed to function properly.

6 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~the only costs that may be incurred by a local agency or school~~
9 ~~district will be incurred because this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
11 ~~for a crime or infraction, within the meaning of Section 17556 of~~
12 ~~the Government Code, or changes the definition of a crime within~~
13 ~~the meaning of Section 6 of Article XIII B of the California~~
14 ~~Constitution.~~